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Letter dated 16 November 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 7 July 2004 (S/2004/556). The Counter-Terrorism Committee has received the attached fourth report from Luxembourg submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 11 November 2004 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Luxembourg to the United Nations presents its compliments to the President of the Counter-Terrorism Committee and has the honour to transmit herewith the fourth report with regard to the application of the resolution 1373 of the Security Council (see enclosure).

Enclosure

[Original: French]

Fourth report of Luxembourg to the Security Council Counter-Terrorism Committee

This report contains the replies to the questions concerning implementation measures transmitted by the Chairman of the Counter-Terrorism Committee in his letter of 30 June 2004.

1. Implementation measures

Criminalization of terrorist acts and their financing

Paragraph 1.1

Enactment of draft law No. 5165 aimed at strengthening the machinery for combating money-laundering and terrorist financing

The Chamber of Deputies voted to adopt draft law No. 5165 on combating money-laundering and terrorist financing on 27 October 2004.

The Act will enter into force in late November 2004.

Elaboration of the draft law on cybercrime that takes counter-terrorism into account

A preliminary draft law on cybercrime is now being drawn up and government consultations on it are under way to ensure the best possible application of the provisions of the Council of Europe Convention on Cybercrime of 23 November 2001 to effective counter-terrorism efforts.

Effectiveness of financial system protections

Paragraph 1.2

Procedures used to designate an organization as a terrorist organization, and the number of organizations so designated other than those listed in Security Council resolution 1267 (1999)

Luxembourg does not have a specific procedure enabling it to designate an organization as a terrorist organization. The Luxembourg surveillance and law enforcement authorities apply in their entirety the lists of terrorist organizations established by international organizations, including the United Nations and the European Union. In the course of acting on the lists, it became clear that as things now stand counter-terrorism action in Luxembourg does not require setting up a national procedure specifically for the purpose of such designation.

To date, no one has yet been prosecuted in Luxembourg for having encouraged or supported a terrorist organization or group.

Paragraph 1.3

Measures to prevent terrorists and other criminals from moving funds

Since the adoption of the Act of 12 August 2003, activities involving the transfer of funds are the exclusive preserve of authorized financial sector professionals who are monitored and subject to anti-money-laundering legislation (art. 28-6 of the amended Act of 5 April 1993 concerning the financial sector).

Financial professionals, like credit institutions, are, for instance, not only required to register but are also subject to constant precautionary monitoring by the Anti-Money Laundering Commission, which is aware that, since the adoption of the Act of 12 August 2003, terrorist crimes can be found underlying other crimes.

It should, however, be pointed out that, in practice, all activities having to do with funds transfers in Luxembourg are performed by credit institutions. To date, no one has been detected performing a clandestine, illegal activity of this kind.

Effectiveness of counter-terrorism

Paragraph 1.4

Information about the accession of Luxembourg to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, as well as about the implementation in domestic law of the other international instruments relating to terrorism to which Luxembourg is a party.

Accession to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents is currently under consideration.

It is, however, relevant to cite the following provisions of the Act of 12 August 2003:

"**Article 135-1.** Any crime or offence shall constitute a terrorist act if it is punishable by imprisonment of up to at least three years or by a more severe penalty and if, by nature or by the circumstances in which it was committed, it can cause serious harm to a country, an organization or an international body and has been committed intentionally with the aim of:

- Seriously intimidating a population;
- Exerting undue pressure on public authorities, an organization or an international body to perform or to refrain from performing any act; or
- Seriously destabilizing or destroying the basic political, constitutional, economic or social structures of a country, an organization or an international body.

"**Article 135-2.** Persons committing a terrorist act as stipulated in the preceding article shall be punished by imprisonment of from 15 to 20 years. They shall be punished by life imprisonment if such act has caused the death of one or more persons.

Paragraph 1.5

Information about how Luxembourg ensures that there is adequate cooperation and information-sharing among the various government agencies likely to be involved in investigating the financing of terrorism.

Nationally, there are in Luxembourg only a small group of agencies involved in counter-terrorism operations, which makes information-sharing that much easier. Counter-terrorism information is, then, exchanged among:

- The Financial Intelligence Unit (CRF/FIU of Luxembourg);
- The Anti-Terrorism Unit of the Criminal Investigation Service of the Grand-Ducal Police, which carries out investigations with the oversight of the Public Prosecutor of the circuit court for the Luxembourg judicial district, who has exclusive jurisdiction over terrorist cases; and
- The State Intelligence Service.

Financial sector professionals are required to report to the Financial Intelligence Unit all operations with a suspected link to money-laundering, which is one of the prime means of financing terrorist crimes. Furthermore, with the entry into force of draft law No. 5165 referred to earlier under paragraph 1.1, every financial operation with a suspected link to the financing of terrorism will have to be reported as such in a declaration to the Financial Intelligence Unit, even when it is not necessarily a money-laundering operation.

Because the Financial Intelligence Unit comprises public prosecutors from the exclusive office of the Luxembourg district Public Prosecutor with exclusive jurisdiction over terrorist cases and police officers from the Criminal Investigation Service, the information needed to investigate and prosecute terrorist suspects is exchanged directly between the two institutions involved.

Information is also shared directly between the State Intelligence Service and those two institutions in the course of joint meetings.

Internationally, Luxembourg takes full advantage of the various international information-sharing mechanisms.

Pursuant to article 26-2 of the Code of Criminal Procedure and Decision 2000/642/JHA of the Council of the European Union concerning the arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information, the CRF/FIU-LUX is authorized to transmit information regarding money-laundering to counterpart agencies in other States, on condition that the arrangement is reciprocal and without having to conclude a memorandum of understanding. Such exchanges of information are made through the FIU.NET web site and the Egmont Secure Web site.

The Anti-Terrorism Unit of the Criminal Investigation Service of the Grand-Ducal Police can also exchange counter-terrorism information by using the established police systems for the exchange of information within the framework of the International Criminal Police Commission (ICPO)-Interpol, the European Police Office (Europol), the Convention implementing the Schengen Agreement of 19 June 1990, Eurojust, the Police Working Group on Terrorism under Pillar Three (Justice and Home Affairs) of the European Union, or through bilateral police channels.

As to reciprocal judicial assistance, the Public Prosecutor of the circuit court for the Luxembourg district can exchange information relating to terrorism in accordance with various international instruments to which Luxembourg is a party.

Effectiveness of customs, immigration and border controls

Paragraph 1.6

Information on the operation of border controls and on any relevant monetary or financial thresholds

Customs controls are carried out regularly within the limits authorized by European Community legislation. Any discovery of cash, negotiable instruments and precious stones or metals of great value is recorded in writing.

However, in accordance with the international and Community rule concerning the free circulation of capital, there are no monetary or financial thresholds in Luxembourg. The specific instances of terrorism that have been uncovered abroad seem, in any case, to indicate that the funds used by terrorists often fall well below thresholds of that sort.

Paragraphs 2.1 to 3.3

With regard to paragraphs 2.1 to 3.3, there are no comments to be made in answer to the questionnaire except on one point:

Areas where Luxembourg could provide assistance to other States in connection with the implementation of the resolution

Luxembourg believes that it does not have the necessary means to provide any assistance to third States in the areas in question.

It should be said, however, that the policy of the European Union on the matter is geared to assistance to third State